MT LEGISLATIVE HISTORY

Chapter 602 1983

Bill H _____ S 313 Original bill & hist. ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 11	✓ C	Hearing Date(s)	Feb 04	✓ C
	Mar 22	✓ C		Feb 17	✓ C
		C			C
		C			C
Date Out	Mar 23	✓ C		Feb 17	✓ C
	Rpt 322			Rpt 217	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 313

INTRODUCED BY HALLIGAN, CHRISTIAENS, BERG

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

January 28, 1983	Introduced and referred to Committee on Judiciary.
February 18, 1983	Committee recommend bill do pass as amended. Report adopted.
February 19, 1983	Bill printed and placed on members' desks.
February 21, 1983	Second reading, do pass as amended.
February 22, 1983	Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 46; Noes, 3. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Judiciary.
March 22, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1983	Second reading, concurred in as amended.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983	Returned to Senate with amendments.
April 8, 1983	Second reading, amendments concurred in.
April 11, 1983	Third reading, amendments concurred in. Ayes, 49; Noes, 0.
	Sent to enrolling.
	Reported correctly enrolled.

BILL NO. 313

INTRODUCED BY Stapleton

BY REQUEST OF THE DEPARTMENT OF JUSTICE

Berg

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SUSPEND OR REVOKE THE DRIVER'S LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; PROVIDING A PERIOD OF REVOCATION AND INCREASING THE PERIOD OF SUSPENSION; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL OF SUSPENSION TO THE COUNTY ATTORNEY; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a ~~person~~ resident driver under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the ~~division, upon the receipt of~~ officer shall, on behalf of the division, suspend or revoke the license or driving privilege of the resident driver by immediately seizing his driver's license. The peace officer shall forward the license to the division, along with a sworn report ~~of the peace officer~~ that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer~~, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days~~.

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the division, a notice of suspension or revocation and a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the division, a revocation of 1 year with application for a restricted probationary license allowed after 6 months of revocation have been served.

(6) Like refusal by a nonresident shall be subject to suspension by the division in like manner, and the same notice and temporary driving permit shall be issued to nonresidents.

(7) All such suspensions are subject to review as hereinafter provided."

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended or revoked, as hereinbefore authorized, in writing and such person shall

have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon ~~30~~ 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

-End-

PROPONENTS: Jean R. Anderson, a member of the Judicial Standards Commission, distributed a report of the Commission (Exhibit "B"). She advised that the purpose of the Commission is not to "get" judges but to insure there is no misconduct. She went on to address the issue of whether complaints should be verified or unverified and it was her opinion that complaints could best be handled in verification form. The Committee was then informed that Steve Brown was present to answer any technical questions.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Chairman Turnage stated it was his opinion that the authority of the Commission to remove a judge for "willful misconduct" gave the Commission power to act on violations of the judicial canons of ethics. Steve Brown advised that the Supreme Court is considering updating the canons. Discussion continued as to the need to "legislate in the constitution" and the problems unverified complaints could cause.

Senator Blaylock closed by saying a Judicial Standards Commission will give people a place to go with their complaints.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 313: Senator Halligan, sponsor, advised that SB313 is part of a three-part package of bills requsted by the Attorney General, which would hopefully discourage drinking and driving. The bill covers three major areas: (1) it will increase the penalty for refusing to submit to a chemical test, (2) allow the arresting officer to revoke a license by immediately seizing it, and (3) will shorten the required period of notice to the county attorney of an appeal of a suspension to 10 days.

PROPONENTS: Sarah Power, an Assistant Attorney General, advised that this bill will encourage people to submit to a chemical test, as implied consent has been a large problem in the state. It is hard to prosecute a D.U.I. without the test and many people would rather have their license suspended temporarily than receive a D.U.I. conviction. She detailed the bill and its effects and urged the Committee to give it a favorable recommendation. Written testimony was also presented for inclusion in these Minutes (Exhibit "C").

Duane Tooley, representing the Department of Motor Vehicles, also urged the passing of this bill.

Frances Alves, Director of the Missoula County Drunk Driver Prevention Program at the Missoula City-County Health Department,

advised the Committee of statistics relating to drunk driving and urged the passing of SB313 as it is a strong and appropriate measure for deterring these drivers. Her written testimony was also submitted for inclusion in these Minutes (Exhibit "D").

Betty Wing, a Missoula Deputy County Attorney, distributed a handout (Exhibit "E") which cited the two important provisions of the bill. It was her opinion that the license suspension upon refusal of the chemical test and immediate seizure of the license would be two significant factors in deterring drunken drivers. She also stated it is important for the attorney prosecuting D.U.I. cases to have a blood alcohol level in order to get a conviction, and felt there would be fewer trials if more people submitted to the chemical test. She closed by stating implementation of this law would speed up the process without attempting to take away due process.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

The Committee questioned how the license would be taken away from the individual and how the issuance of a 72-hour temporary license would be handled. They were advised that the temporary license would not be issued to the accused until he was capable of driving.

ACTION ON SENATE BILL 37: Counsel again explained that the amendments proposed will provide the water judge with the power for judicial review of certain administrative proceedings. Both Judge Lessley's and Jim Moore's suggestions had been taken into consideration when drafting the amendments. The Committee felt Judge Lessley had incorrectly used the words "water division" in his proposals and debated other alternatives so as to give the division the definition Judge Lessley was seeking. Senator Mazurek noted that Judge Lessley's concern over the unconstitutionality of creating a "water court" was a "non-issue" because the Constitution allows the legislature to create courts in addition to the district courts. Senator Galt moved to adopt the amendments proposed. This motion passed unanimously. Senator Galt then moved that SB37 DO PASS AS AMENDED. This motion passed with Senator Berg voting in opposition.

ACTION ON SENATE BILL 23: Counsel advised that the amendments as proposed by Judge Lessley would cause conflicts in the law. Senator Berg moved that the Committee should reconsider the amendments previously adopted on SB23. This motion passed unanimously. Senator Galt then suggested using the phrase "before the water court." The Committee considered other alternatives in language which would designate judges and masters capable of holding hearings and it was determined that Senator Galt's

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-4-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

EXHIBIT "C"
February 4, 1983

Testimony of Sarah Power,
Assistant Attorney General,
re: SB 313

SB 313 proposes three changes to the implied consent law: 1) increases the penalty for refusal to submit to a chemical test; 2) allows for pickup of the license and notice of suspension to handled by the arresting officer; 3) shortens the required period of notice to the county attorney of a hearing to challenge the suspension. The amendments are intended to encourage people to submit to a chemical test and to eliminate some of the administrative problems which arise once refusal occurs. The bill does not create a brand new system but simply amends the present one to allow for a stronger, more efficient procedure to be implemented.

The implied consent problem is no small one; in 1982, there were 1385 implied consent suspensions, up from the 1981 total of 960 suspensions.

Presently an individual who refuses a chemical test loses his driving privileges for 60 days. No restricted probationary licenses are given for the entire period. The length of the suspension is the same whether the refusal is the driver's first or his fifteenth. As you are all aware it is difficult to prosecute many DUI

HCH 2-4-87

cases without chemical test results. The public is aware of this problem and often drivers would rather undergo a 60 day implied consent suspension than face the more severe penalties imposed by a DUI conviction.

The proposed amendment to subsection (5) of section 61-8-402, MCA, sets up a two tiered penalty provision. A person's first refusal would result in a six month license suspension with no provision for a restricted probationary license. On a second or subsequent refusal within five (5) years the penalty escalates to a one (1) year revocation with a restricted probationary license available after serving six months of the revocation. The Department believes that by increasing the penalty substantially an individual will be less likely to refuse to submit to a chemical test.

The second amendment would eliminate some administrative problems which arise once refusal occurs. When a person refuses a test the arresting officer must forward to the division a sworn report documenting the refusal. Upon receipt of the report the division notifies the driver of the 60 day suspension and requests the individual to surrender the license to the division. In approximately 60% of the cases the license is not surrendered upon written demand and it is necessary to issue a "pickup" order for it. The order directs a member of the Highway Patrol to track down the driver and confiscate his license. The process is time

consuming and takes away already scarce patrolmen from their regular duties. The amendment found in subsection (4) of section 61-8-402, MCA, eliminates the middleman. The arresting officer confiscates the license himself and delivers to the driver the written notice of suspension. A sworn report will still be forwarded to the division for its records but the license would now accompany it.

The final amendment is to section 61-8-403, MCA. A person who is suspended under the "implied consent" law has the right to appeal his suspension to district court. Currently the driver must give 30 days written notice to the county attorney of the hearing date. Because the suspension will be immediate under the above amendments it is necessary to rework the statute to protect the due process rights of the affected driver. For this reason a 72-hour temporary driving permit is given the driver when his license is confiscated by the arresting officer. This allows the individual sufficient time to get into court and request a stay order to protect his driving privileges while he challenges his suspension. In addition, the time period for notice to the county attorney of any hearing on the suspension is reduced from 30 days to 10 days. The due process considerations involved in implied consent statutes were discussed by the U.S. Supreme Court in the case of Mackey v. Montrym, 443 U.S. 1 (1979). In that case, the

U.S. Supreme Court upheld a Massachusetts statute mandating summary suspension of a drivers' license for refusal to submit to a chemical test but made it clear that the availability of a prompt postsuspension hearing was a crucial factor in evaluating any similar statute on due process grounds. The temporary driving permit provides an individual with the opportunity to seek court review if he desires. The individual would not be denied due process in seeking that review. In the same way the 10 day notice period allows the individual to expedite his review.

In summary, the proposed amendments to SB 313 are intended to eliminate the refusal to submit to a chemical test as an attractive alternative to those individuals arrested for drunken driving and to increase the administrative efficiency of the suspension process.

SB 313 is a crucial piece of legislation not only for the changes in the implied consent law it proposes but for the role the changes will play in the State's fight against drinking and driving. Currently there are three major pieces of legislation proposed by the Department of Justice in the drunk driving area. SB 313 is the key to the entire package. The other two bills set up stringent standards and tougher penalties for DUI. Without a similar increase in the implied consent area, more and more individuals will refuse the test in an attempt to avoid the stiffer criminal and

administrative penalties which accompany DUI charges. That occurrence would nullify the entire war currently being waged on drinking and driving. For these reasons I would urge passage of SB 313.

EXHIBIT "D"
February 4, 1983

I am Frances D. Alves, M.P.H., Director of the Missoula County Drunk Driver Prevention Program at the Missoula City-County Health Department. I represent a 30-member task force of many disciplines and organizations concerned about drunk driving. We strongly support Senate Bill 313.

It is well known that 50% of the 50,000 automobile fatalities (25,000) occurring in this country each year are alcohol related.[1] (In Montana, 60-65% of all drivers killed in traffic accidents had been drinking.[2]) Additionally, 25% of U. S. non-fatal crashes are alcohol related, and drunk drivers are associated with 750,000 injuries per year. Drunk driving then is a serious public health problem. It is the number one killer of Americans under age 40 and a very significant cause of death for those over 40.[3]

Immediate suspension or revokation of a driver's license upon refusal to submit to a chemical test to determine blood alcohol concentration (BAC) is a strong and appropriate measure to reduce the significant public health problem of drunk driving. Nationally, problem drinkers constitute two thirds of DUI arrests.[4] This far exceeds the percentage of the driving population they constitute: about 13%.[5] These people need treatment for problem drinking. Alcohol treatment programs are almost unanimous in operating on the premise that a first step in such treatment is for problem drinkers to suffer the full and natural consequences of their actions. Having a driver's license immediately suspended or revoked for refusing a chemical test to determine BAC is and should be a consequence of driving drunk.

This action protects the public health in two ways. It prevents drunk drivers from driving and threatening the lives and health of the public. And it strongly encourages problem drinkers to be moved toward treatment when they

EXHIBIT 2 H-83

can not be shielded from the consequences of their drinking and driving.

Reluctance to take this strong action because of a general feeling of "There but for the grace of God go I" is simply unfounded. In Montana, the average BAC of persons arrested for DUI is 0.18%. (Montana Department of Highway Information.) Legal intoxication is 0.10% or greater. And a BAC of 0.15% strongly indicates a tolerance of a problem drinker. Most DUI arrests, then, involve people with drinking problems who have drunk far in excess of one to two social drinks.

If penalties for refusing a chemical test for DUI are equal (and not less severe) than penalties for DUI conviction, i.e. six months, the DUI suspect is more likely to submit to that test. This again sets in motion the process previously described of moving problem drinkers to treatment and protecting the public health from the hazards of drunk driving. And - it will be a strong message to the public and individual drivers that drunk driving will not be tolerated in Montana.

The Missoula County Task Force on the Prevention of Drunk Driving strongly supports the passage of Senate Bill 313.

1. Alcohol Health and Research World, Volume 7, Number 1. Fall 1982.

2. "A Driver's Guide to Drinking", Montana Highway Traffic Safety Division. Undated

3. "A Manual for Managing Community Alcohol Safety Education Campaigns", National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation. November 1982

4. "Alcohol and Traffic Safety", NHTSA. 1981

5. Daniel Sinawski, Colorado Department of Highways: DUI Training School, Missoula Montana, 1982

Frances D. Alves, M.P.H.
Missoula City-County Health Dept
721-5700, ext. 398

MISSOULA COUNTY
OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE: (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

EXHIBIT "E"
February 4, 1983

Betty Wing
Deputy County Attorney, Missoula County

Proponent of Senate Bill 313

Senate Bill 313 is the key provision in a package of DUI bills. The other bills provide penalties for driving with an alcohol concentration of .10 or more. (House Bill 540 provides criminal penalties and a bill yet to be introduced provides administrative penalties.) These bills will only serve their purpose if the driver submits to a chemical test of his blood, breath or urine to determine the alcohol concentration.

Senate Bill 313 is designed to induce the driver to take a chemical test, usually the breathalyzer test. This is very important in conjunction with the package of bills or standing alone.

The bill has two important provisions:

1. <u>The driver's license will be suspended for 6 months upon refusal of the breathalyzer</u>

Currently the suspension is for 60 days. The 6 month suspension will be a greater incentive to take the test.

The results of a breathalyzer or blood test are valuable evidence in a DUI prosecution. It is hard, scientific evidence to present to a judge or jury. It is even more valuable in avoiding a trial altogether. It has been my experience that

Kalispell Area Chamber of Commerce Post Office Box 978 Kalispell, Montana 59901 Telephone (406) 755-6166

February 9, 1983

Senator Jean Turnage
Chairman, Senate Judiciary Committee
Montana Legislature
State Capitol
Helena, Montana 59601

Dear Senator Turnage:

The Board of Directors of the Kalispell Area Chamber of Commerce wishes to advise you and the Committee of its opposition to Senate Bill 313.

Allowing an arresting officer to sit in a judicial capacity to suspend or revoke a license properly issued without appropriate hearing or due process is completely inconsistent with our constitutional process.

We request the Committee's opposition to Senate Bill 313 and request further that this letter be made part of the Committee records relative to Senate Bill 313.

Very truly yours

KALISPELL AREA CHAMBER OF COMMERCE

By _____
President

By _____
Chairman, Legislative Affairs

DATE 2-4-83

COMMITTEE ON Judiciary BILL NO. SB313, 326 & 328

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Dr. Mark Mayer	Montana Psychological Assn.	✓ SB328	

(Please leave prepared statement with Secretary)

Senator Berg then moved SB366 DO NOT PASS. This motion carried with Senators Galt, Mazurek, Crippen and Turnage voting in opposition.

ACTION ON SENATE BILL 385: The Committee discussed the need for this bill and how requiring inspection of vehicles for identification numbers would cause additional work and expense for innocent owners. Senator Halligan moved SB385 DO NOT PASS. This motion carried unanimously.

ACTION ON SENATE BILL 388: Counsel distributed amendments and reviewed how the amendment would take the power away from the commission for it to act upon its own motion. Senator Berg moved to adopt the proposed amendment. This motion passed unanimously. Senator Berg then moved SB388 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON HOUSE BILL 327: The Committee agreed that shoplifting is a problem, but felt this was a bad bill. The idea that a merchant could frisk a person in private concerned the Committee. It was the consensus of the Committee that it would take too much work to reword the bill; therefore, Senator Berg moved SB327 BE NOT CONCURRED IN. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 452: Amendments were distributed that would assure the results of a polygraph test could not be admitted into evidence during the course of a trial. The bill would still provide that a polygraph examiner must be licensed and subject to continuing education. Senator Crippen moved to adopt the proposed amendments. This motion carried unanimously. Senator Crippen then moved that HB452 BE CONCURRED IN AS AMENDED. This motion carried with Senators Shaw, Mazurek, Daniels and Galt voting in opposition.

ACTION ON HOUSE BILL 143: It was the consensus of the Committe that this was not a good bill. Senator Berg moved HB143 BE NOT CONCURRED IN. This motion carried with Senator Hazelbaker voting in opposition.

ACTION ON SENATE BILL 313: Senator Mazurek moved that SB313 BE TAKEN FROM THE TABLE. This motion passed unanimously. The Committee then amended the bill to remove the authority from the arresting officer to revoke or suspend the license and to decrease the period of suspension and revocation. Senator Halligan moved to adopt the amendments. This motion passed unanimously. Senator Halligan then moved SB313 DO PASS AS AMENDED. This motion passed unanimously.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-17-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 313

Halligan

Respectfully report as follows: That Senate Bill No. 313

introduced bill, be amended as follows:

1. Title, line 6.
   Strike: "SUSPEND OR REVOKE"
   Insert: "SEIZE"

2. Title, line 8.
   Strike: "A PERIOD OF REVOCATION AND"
   Insert: "FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION;"

3. Page 2, lines 14 and 15.
   Strike: "suspend" through "driver by"

4. Page 2, line 15.
   Strike: "seizing"
   Insert: "seize"

Continued on Page 2

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 2, line 25,
Following: "60-days"
Insert: "Upon receipt of the report, the division shall suspend the license for the period provided in subsection (5)"

6. Page 3, line 3.
Strike: "notice of suspension or revocation and a"

7. Page 3, line 8.
Strike: "6 months"
Insert: "90 days"

8. Page 3, line 12.
Strike: "1 year"
Insert: "6 months"

9. Page 3, line 14.
Strike: "have been served"

10. Page 3, line 17.
Strike: "notice and temporary"

And, as so amended,

DO PASS

JEAN A. TURNAGE, Chairman

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE JUDICIARY COMMITTEE House
March 11, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 313

This is a bill which allows an arresting officer to immediately seize the driver's license of any person refusing to submit to a chemical test; providing for suspension or revocation of the license by the Motor Vehicle Division, increasing the period of suspension; and reducing the time for notice of an appeal of suspension to the county attorney.

SENATOR HALLIGAN, District 48, Missoula, stated that this bill strengthens the implied consent statute to allow an arresting officer to seize the driver's license of any individual operating a motor vehicle who refuses to submit to a chemical test and strengthens the penalties involved.

ALBERT GOKE, Administrator of the Highway Traffic Safety Division of the Department of Justice, stated that they support this bill and he has several amendments he would like to propose. See EXHIBIT A.

SARAH POWER, Assistant Attorney General in the Department of Justice, said that she wanted to give her support to this bill and urged that the committee pass it. She informed the committee that she did some of the drafting on the bill and would be happy to answer any questions.

FRANCES ALVES, representing the City-County Health Department, Missoula, Montana, stated that she represents a task force that is concerned about drunk driving and they feel that they need the protection and the help that is given by this bill and they also support the amendments.

MIKE TOOLEY, Chief of Driver Services of the Department of Justice, stated that there was concern that was mentioned in this committee about getting to the drunk before the occasion happens and the main thing involved in the federal money is related to training, publicity and prevention.

JIM NUGENT, City Attorney for the City of Missoula, offered a statement in support of this bill. See EXHIBIT B.

BETTY WING, Deputy County Attorney for Missoula County, said she would add her support for this bill and for the amendments. She indicated that they would like to see the federal funding, but they also feel that the changes are important in themselves. She contended that if they had a six-month's suspension when they refused and a six-month's suspension when they were convicted, then there will be more of a chance that they will take the test. She indicated that the test is very important for them because it is hard scientific evidence that they can use before a judge and jury.

GORDON POWELL, representing Mothers Against Drunk Driving, indicated that they would like to see this bill pass as it gives an immediate answer to drunk driving at the scene and they feel that driving is a privilege.

There were no further proponents and no opponents.

SENATOR HALLIGAN advised that he did not have any problems with the amendments; they originally had in there that once the seizure took place, the driver's license would be suspended but Senator Turnage did not think that that was appropriate and he would allow for the seizure but not the immediate suspension.

REPRESENTATIVE EUDAILY indicated that he did not remember the details of all the bills that we have had in this committee and he wondered how the provisions in this bill fit in with the other ones. He thought that they had deleted the temporary license in one of them and narrowed the language which related to driving on the public highways. MR. GOKE answered that there are a number of bills; they have three bills that include a definition of "ways" and SB 313 should agree with these; HB 808 differs from SB 313 basically in the provision relating to seizure instead of suspension; it also includes penalties of six months while SB 313 has penalties of 90 days and six months. He stated that it is their intention to propose an amendment to HB 808 in the Senate and to his knowledge, they are not building in an internal conflict.

REPRESENTATIVE HANNAH thought that one of the main ingredients in thse bills is the definition of the language "ways of the state open to the public"; and he wondered if when these bills are passed out of this committee and become law, will this language be incorporated into all of them. MS. POWER responded that any action taken on SB 313 or any other of these bills will be reconciled in a conference committee. She advised that this bill does not address or appear to change the language "upon the public highways", but SB 250 does address that particular issue and requires a change in the language.

REPRESENTATIVE HANNAH commented that he missed the testimony on the federal money and wondered what was said. SENATOR HALLIGAN responded that there is around $300,000.00 available for training and equipment. MR. GOKE clarified by saying that there would be approximately $300,000.00 a year; the fact that the federal government would increase that funding, it obviously would grow; and it contains a four-year provision wherein they would stand to receive at least $900,000.00.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 260

This bill extends the laws relating to the operation of a motor vehicle while under the influence of alcohol to roads and parking areas adapted for public travel and used by the public with the consent of the owner.

SENATOR HALLIGAN, District 48, Missoula, stated that the language on the bottom of page 1 and continuing on the top of page 2 defines "ways of this state open to the public" and is the only language that will make it through the Senate. He commented that there was concern that if you were sitting in your Winnebago, which is parked in your driveway, drinking a beer,

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 313 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
P. B. Tooley	Helena	Driver Services	✓	
[illegible]	Helena	Mgr. Public Safety	✓	
Jim Nugent	Missoula	City of Missoula	✓	
Leon Skaley	Missoula	City	✓	
Frances Alves	Missoula	City-Co. Health Dept	✓	
Betty Wing	Missoula	Task Force on Drunk Driving	✓	
Gordon Powell	Gt Falls	MADD	✓	
Sarah Power	Helena	Atty General	—	
Cathy Campbell	Helena	Mont. Assn. of Churches	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit A
SB313
3-11-83

PROPOSED AMENDMENT TO SB 313

Page 3, Line 16: amend "6 months" to read "1 year".

Page 4, Line 7: amend phrase "county wherein such person shall reside" to read "county wherein such person ~~shall~~ resides or in the district court in the county in which the arrest was made."

Exhibit B
SB313
3-11-83

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: SENATE BILL 313 - ALLOWING ARRESTING OFFICER TO SEIZE DRIVER'S LICENSE OF D.U.I. OFFENDER WHO REFUSES TO SUBMIT TO A CHEMICAL TEST

DATE: MARCH 10, 1983 Memo 83-47

I would like to take this opportunity to strongly urge your support for the enactment of Senate Bill 313 allowing an arresting officer to immediately seize the driver's license of any person refusing to submit to a chemical test and providing for suspension or revocation of the license by the Motor Vehicle Division. Allowing the immediate seizure of the driver's license of the individual who refused the breath test will greatly alleviate the problem the Motor Vehicle Division has obtaining the driver's license of the offender who refuses to voluntarily turn in his/her license pursuant to State law.

Increasing the time period of suspension of the driver's license of the individual who refused to submit to a chemical test will help to serve as a deterrent to individuals operating a motor vehicle while the individual is under the influence of alcohol. It will also facilitate the prosecution of offenders for the reason that fewer people will be as likely to refuse to submit to a chemical test. A sixty (60) days'suspension does not serve as much of a deterrent to refusing to submit to a chemical test or to driving while under the influence of alcohol. Also, it is my understanding that in order for the State of Montana to be eligible for federal monies for the purposes of preventing driving and drinking, the periods of suspension of a driver's license for refusing to submit to a chemical test must be at least ninety (90) days for a first offender and at least one (1) year for a subsequent offender within a five (5) year period. This will require an amendment to SB 313 to increase the suspension of the offender's driver's license from the existing proposal of six (6) months to one (1) year.

I would urge your support of Senate Bill 313 with the suggested amendment.

Thank you.

Respectfully,

Jim Nugent

Jim Nugent
Missoula City Attorney

JN/jd
cc: Police Chief Sabe Pfau
Municipal Court Judge Wallace N. Clark

Exhibit E
SB313
3-11-83

WITNESS STATEMENT

Name GORDON POWELL Committee On _____

Address 432-25th Ave NE, GT Falls Date 3-11-83

Representing M.A.D.D. Support ✓

Bill No. 313 Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I strongly agree with the intent of this Bill. DUI is defined as a certain level of an intoxicant & a chemical test is the only way to prove/disprove

2. Let us not let the misuse of the privilege to drive outweigh the rights of citizens to drive & live in safety.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Cathy Campbell Committee On Justice

Address ~~30~~ Helena Date March 11, 1983

Representing Mt. Assn. of Churches Support ✓

Bill No. SB 260 + 313 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. See attached comments endorsing legislation that will effectively impede the menace of driving under the influence of alcohol or other drugs.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

SENATE BILL 313

REPRESENTATIVE DAVE BROWN noted that this bill was similar to HB 808, which was officially tabled in the Senate Judiciary as of yesterday, and HB 540, the per se law, had not been acted on, but would probably be tabled on this date. He informed the committee that Senator Turnage expressed the opinion that anytime a machine takes the place of a judge, that they are in trouble.

REPRESENTATIVE FARRIS moved that this bill BE CONCURRED IN. REPRESENTATIVE BERGENE seconded the motion.

CHAIRMAN BROWN moved that the bill be amended on page 1, line 17, by striking "the public highways of this state" and inserting "ways of the state open to the public" and also on page 2, line 2, page 2, line 21, page 4, line 7. REPRESENTATIVE SPAETH seconded the motion.

The motion carried unanimously.

REPRESENTATIVE KEYSER moved to amend the bill on page 4, line 7, by striking "shall reside" and inserting "resides or in the district court in the county in which the arrest was made". REPRESENTATIVE IVERSON seconded the amendment.

CHAIRMAN BROWN wondered if this meant that if hewere picked up in Yellowstone County, would they take him back to Butte. REPRESENTATIVE ADDY replied that it would be your choice.

CHAIRMAN BROWN clarified by saying you would still have a choice and could do it either place, but under the existing statute you would have to go back to the county in which you reside.

REPRESENTATIVE SPAETH said that he was not sure why they were doing this. MS. DESMOND replied that one reason that was given was that students that are arrested that are in school in Missoula, if they want to appeal under existing law, have to go back to the counties in which they reside.

The motion carried unanimously.

REPRESENTATIVE JENSEN noted the language on page 3, line 4 wherein it says, "the peace officer shall issue a temporary driving permit, which is valid for 72 hours after the time

of issuance." REPRESENTATIVE FARRIS wondered why they did not offer an amendment to strike section 4.

REPRESENTATIVE RAMIREZ said that before you take someone's license away, they might have some things they need to deal with, such as taking their automobile back to their home. He explained that an individual might be arrested in Missoula and living in Billings; or they may be on a trip or something like that.

REPRESENTATIVE JENSEN asked why they do not give them a 72-hour notice to appear.

REPRESENTATIVE RAMIREZ commented that it also gives them an opportunity to appeal.

REPRESENTATIVE KEYSER explained that the whole reason for taking the license away at the time is administrative as it stops the hassle of going back out and picking up a man's license at a later date; and there is some legitimate reasons for giving him extra time. He explained that an individual has been arrested, maybe he has been in the drunk tank until he can sober up; then he should be able to take the car and go home. He noted that is why they need to give him that three-day permit.

REPRESENTATIVE FARRIS exclaimed that this doesn't say after he is sober, he can drive. REPRESENTATIVE KEYSER said they are arresting him for it, but he is usually either locked up or they take him home. He continued that they still have that license and the license is no good anyway after the end of that third day.

REPRESENTATIVE CURTISS wondered if this language conforms to the guideline whereby the department is trying to get the $1 million. LARRY MAJERUS, Administrator of the Motor Vehicle Department of the Department of Justice, informed the committee that this issue is not addressed in any of the federal guidelines; when they talk about immediate suspension, they are talking about picking up the driver's license; the reason for the 72-hours is that in subsection 4, it says that the police officer shall seize the driver's license on behalf of the division; the suspension really does not take place until the affidavit is reviewed by the division; and

the suspension will usually take place some three days later. He explained that normally the police officer will place it in the mail within 24 hours; they will receive it within 24 hours; and they will suspend the same day they receive it. He said it takes three days to suspend the license and there was some concern, that if you suspend it, the individual can still drive anyway; and in giving him a slip of paper that shows he is pending suspension, this would serve the purpose.

REPRESENTATIVE JENSEN asked what then is the reason for taking the license. MR. MAJERUS replied that if they don't take the license, then normally in 60 per cent of the cases, they will have to send out a pickup order, which means they will write a letter asking them to submit their license and only 40 per cent of the people do submit their license; then the patrolman has to physically go and secure the license.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. The motion was seconded by REPRESENTATIVE RAMIREZ.

REPRESENTATIVE SPAETH said that he thought if they refuse to take a breathalyzer test, they should not be allowed to drive, and he felt that the whole purpose of the bill is to encourage people to take a breathalyzer.

REPRESENTATIVE JENSEN asked if the refusal to take the breathalyzer test can be construed as an admission of guilt. REPRESENTATIVE SPAETH replied that he did not say that this was to be construed as an admission of guilt or innocence; but when you get your driver's license, you agree to comply with certain requirements and one of these requirements is that you will take a breathalyzer test.

The motion carried with 12 voting aye and 7 voting no. See ROLL CALL VOTE.

REPRESENTATIVE BERGENE wondered about the suggestion that they had concerning an interim committee that might look at the insanity defense along with the committment laws and she asked if they should have a committee bill. She informed the committee that she checked with the mental health center in Great Falls and talked with two of the psychiatrists there;

STANDING COMMITTEE REPORT

March 22, 19 33

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 313

third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY ~~SUSPEND OR REVOKE~~ SEIZE THE DRIVER'S LICENSE OF ANY PERSON REFUSING TO SUBMIT TO A CHEMICAL TEST; ~~PROVIDING A PERIOD OF REVOCATION AND~~ FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION; INCREASING THE PERIOD OF SUSPENSION; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL OF SUSPENSION TO THE COUNTY ATTORNEY; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA."

Respectfully report as follows: That SENATE Bill No. ~~313~~

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Following: "PERSON"
Strike: "REFUSING"
Insert: "DRIVING UPON WAYS OF THIS STATE OPEN TO THE PUBLIC WHO REFUSES"

2. Title, line 10
Following: "SUSPENSIONS;"
Insert: "PROVIDING THAT AN APPEAL OF SUSPENSION MAY BE FILED IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE ARREST WAS MADE AS WELL AS IN THE DISTRICT COURT IN THE COUNTY OF THE DRIVER'S RESIDENCE;"

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

March 22 19 93

3. Page 1, line 17.
Strike: "the" through "state" on line 18.
Insert: "ways of this state open to the public"

4. Page 2, line 2.
Strike: "the" through "state" on line 3.
Insert: "ways of this state open to the public"

5. Page 2, line 21.
Strike: "the" through "state" on line 22
Insert: "ways of this state open to the public"

6. Page 4, line 7.
Following: "person"
Strike: "shall reside"
Insert: "resides or in the district court in the county in which this arrest was made"

7. Page 4, line 16.
Following: "upon"
Strike: "the public highways"
Insert: "ways of this state open to the public"

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.